IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21969 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MOSAM DULSINGH NAYAK - Petitioner(s)

Versus

DISTRICT MAGISTRATE PANCHMAHAL DISTRICT & 2 - Respondent(s)

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Appearance :
MR CHETAN B RAVAL for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,
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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 22/11/2005

ORAL JUDGMENT

1. Mosam Dulsingh Nayak-petitioner has filed this petition of habeas corpus praying for issue of

appropriate writ or order to quash and set aside the order of detention dated 08.08.2005 passed by District Magistrate, Panchmahal-detaining authority under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short 'PASA Act')which is illegal, null and void and also violative of Article 14, 19, 21 and 22 of the Constitution of India. The present petition was filed on 24th October, 2005 and and my learned brother Hon'ble Mr. Justice A.S. Dave issued **RULE** on 28.10.2005 which was made returnable after four weeks and that is why this matter has been placed before this Court.

2. Heard, Mr. Chetan B. Raval, learned Advocate for the petitioner invited my attention to the order of detention dated 08.08.2005 and the grounds supplied therein by which detenu was detained and sent to Sabarmati Central Jail, Ahmedabad on 10.08.2005.

3. As the grounds of detention three offences have been shown as registered against the petitioner-

detenu. First offence took place on 15.08.2004 being registered as C.R. No.179 of 2004 at Halol Police Station punishable under Section 457 and 380 of I.P.C. In that case it was alleged that detenu-petitioner committed theft of one colour T.V. Valued at Rs.8240 from Primary School. Second offence took place on 16.11.2004 being registered as C.R. No.286 of 2004 at Halol Police Station punishable under Section 457 and 380 of I.P.C. In that case it was alleged that detenu-petitioner committed theft of P.V.C. Pipes, agricultural equipments and other goods in all valued at Rs.16,280/-at a farmhouse at Vlg. Rameshara by breaking open the door of the house. Third offence took place on 08.07.2005 being registered as C.R. No.138 of 2005 at Halol Police Station punishable under Section 454, 457 and 380 of I.P.C. In that case it was alleged that petitioner-detenu committed theft of Rs. 1,47,359/- of students' fee at Arts and Commerce College, Halol by breaking open the grill.

4. In connection with the first offence, petitioner-detenu was arrested on 23.04.2005 and was

released on 01.06.2005. In connection with the second offence, petitioner was arrested and was later released on bail on 31.05.2005. In connection with the third offence he was arrested on 11.07.2005 and further investigation is going on.

5. The authority has further stated that ordinary law cannot be taken resort to in view of the activities carried out by the petitioner-detenu. The detaining authority has placed reliance on statements of two witnesses recorded on 19.07.2005. On the basis of the aforesaid facts detaining authority has passed the impugned order terming the petitioner-detenu as 'dangerous person' within the meaning of Section 2(c) of the Act.

6. Mr. Raval, learned Advocate for the petitioner has stated that detaining authority has arrived at subjective satisfaction on the basis of the irrelevant material. So far as the present case is concerned the learned Counsel further submitted that there is total non-application of mind on the part of the detaining authority in arriving at

subjective satisfaction without there being any credible and cogent material on record.

7. Mr. Raval, learned Advocate for the petitioner in support of the aforesaid contentions has placed reliance on the Division Bench judgment of the apex Court (Coram: U.C. Banerjee & K.G. Balakrishnan,J.J.) in the case of Amritlal and Other Vs. Union Government through Secretary, Ministry of Finance and Others reported in AIR 2000 SC 3675 and also decision of this Court (Coram: H.K. Rathod, J.) in the case of Naresh alias Lalo Babubhai Vs. State of Gujarat and Others reported in 2002 (1) GLH 528.

8. Mr. Gohil, learned A.G.P. has not been able to file affidavit due to paucity of time. However, he has submitted that registration of three criminal offences and statement of two witnesses against the petitioner-detenu would go to show that petitioner-detenu was indulging in such serious activities which can be said to be prejudicial to the maintenance of 'public order'. Learned Counsel further submitted that there is sufficient material before the

detaining authority to pass the order of detention and no interference called for by this Court in exercise of its power under Article 226 of the Constitution of India.

9. I have heard learned Counsel for both the parties and after perusal of the record, I am of the view that the detaining authority has passed the order of detention without there being any cogent or credible material on record in this behalf. I have also considered factual and legal aspects emerging from the record of the petition and considered the rival submissions and the facts of the case and also in view of the Division Bench judgment of the apex Court in the case of Amritlal and Other (Supra) and another decision of this Court in the case of Naresh alias Lalo Babubhai(Supra)the order of detention cannot be sustained and deserves to be quashed and set aside. Learned Advocate for the petitioner has also invited my attention to the fact that the petitioner-detenu has made representation before Secretary, PASA Advisory Board, Gandhinagar dated 28.09.2005, but, same is pending.

10. In the result, this petition is allowed and order of detention dated 08.08.2005 passed by District Magistrate, Panchmahal-detaining authority is hereby quashed and set aside. Mosam Dulsingh Nayak-detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case by the authority. Rule is made absolute to the aforesaid extent with no order as to costs. D.S. permitted.

(K.M.MEHTA,J.)

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